

NOT FOR PUBLICATION

MAY 15 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANTIAGO BALDOMERO MORAN  
LUCERO; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-74417

Agency Nos. A95-294-998  
A95-294-999

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 12, 2008<sup>\*\*</sup>

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

Petitioners seek review of a Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of their motion to reopen.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review the denial of motions to reopen for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). The regulations provide that a motion to reopen must contain material evidence that was not previously available and could not have been discovered or presented at the former hearing. *See* 8 C.F.R. 1003.23(b)(3). Here, petitioners presented evidence in the form of a doctor's letter that was identical in content to a letter that was presented to the IJ at the former hearing. We conclude that the BIA did not abuse its discretion by affirming the denial of the motion to reopen because the motion was based on evidence that was previously available. Respondent's motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Accordingly, this petition for review is denied part.

Petitioners' contention that the IJ was biased was not previously raised before the BIA. We lack jurisdiction to consider unexhausted claims that could have been corrected by the BIA. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). Accordingly, this petition for review is dismissed in part.

The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

All other pending motions are denied as moot.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**